

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 10751 of 1996

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

NIMISHBHAI G BRAHMBHATT
VERSUS
NADIAD MUNICIPALITY

Appearance:

MR HM PARIKH for the Petitioners
MR MC SHAH for Respondent No.1
MR VB GHARANIA for Respondent No.2
MR JAYESHBHAI H SOLANKI, PARTY IN PERSON for
Respondents No.5 and 6
None present for other Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of decision: 23/07/99

C.A.V. JUDGMENT

1. The petitioners who are the employees of the respondent Nadiad Municipality under the orders dated 16th March, 1995 and 29th April, 1995 were given promotion on the next higher posts and posted at different places. This decision of the respondent No.1 was taken by the respondents No. 5 and 7 to the District Collector, Kheda by filing an application under section 258 of the Gujarat Municipalities Act, 1963.

2. Under the impugned order, the District Collector held that these promotions and postings of the petitioners are contrary to relevant service rules of the respondent No.1 and consequently these orders have been quashed and set aside. Hence, this special civil application before this Court.

3. Learned counsel for the petitioners contended that in these matters i.e. the service matters, the respondent-Collector has no jurisdiction to interfere with the decision of the respondent NO.1 under section 258 of the Gujarat Municipalities Act, 1963. The counsel for the petitioners has read before this court the relevant provisions of section 258 of the aforesaid Act. It has next been contended that these appointments have been given in accordance with the services rules as prevalent and on the basis of seniority to which no exception can be taken.

4. On the other hand, learned counsel for the respondent contended that the rules which have been framed in the year 1994 were only draft rules. These were not approved by the State Government and the respondent No.1 could not have acted upon these rules. As per the rules which were in force at the relevant time, the promotions could have been made only on the basis of seniority-cum-merit and not only on the basis of seniority, and as such, the District Collector has not committed any error in interfering with these promotions.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. Learned counsel for the petitioners does not dispute that the service rules which are to be framed by the respondent No.1 are subject to the approval of the State Government. The rules which have been framed in the year 1994 by the respondent No.1, wherein as per the contention of the learned counsel for the petitioners, the promotions are to be made only on the basis of

seniority, were not approved by the State Government. This factual position is not disputed by the learned counsel for the petitioners. Learned counsel for the respondent NO.1 also admits this position. So the learned counsel for the petitioners also does not dispute that the promotions have been made on the basis of criteria as laid down under the Rules of 1994 which were not approved by the State Government.

7. So if we go by these admitted facts, the promotions of the petitioners have been made by the respondent NO.1 on the basis of the criteria as laid down for the same under Rules, 1994. This criteria could not have been given effect to as those rules had no force of law. Rules which were in force, learned counsel for the petitioners does not dispute, therein the criteria for promotion is seniority-cum-merit. So if we go by these facts then the decision of the District Collector that these promotions have been made contrary to the relevant service rules is perfectly legal and justified.

8. Learned counsel for the petitioners has only felt contended by raising a too technical contention that the District Collector has no jurisdiction in this matter. However, I do not consider it to be necessary in this case to go on and decide this question for the reason that where the appointments by promotions of the petitioners were contrary to the rules, this court only on this ground cannot interfere with the order of the District Collector, Kheda. It is well settled law that this court will not issue a writ of mandamus or a writ of certiorari where the quashing of the order challenged therein will result in restoration of an illegal order. The promotions which have been given to the petitioners are illegal as being contrary to rules and in case the order of District Collector, Kheda is quashed and set aside on the ground as what the learned counsel for the petitioners contended, then this court will restore the illegal promotions, that is, it will perpetuate illegality, which cannot be done by this Court. Reference in this respect may have to the decision of the Apex Court in the case of Venkateshwara Rao vs. Government of Andhra Pradesh reported in AIR 1966 SC 828, two decisions of the Rajasthan High Court in the case of Jagan Singh vs. State Transport Appellate Tribunal, Rajasthan and Anr. reported in AIR 1980 RAJ. 1 and in the case of Himmat Jain vs. State of Rajasthan reported in AIR 1994 RAJ. 53, two decisions of the Patna High Court in the case of Devendra Prasad Gupta vs. State of Bihar & Ors. reported in AIR 1977 PATNA

166 and in the case of Chintamani Sharan Nath vs. State of Bihar reported in AIR 1990 PATNA 165 and the judgment of the Kerala High Court in the case of A M Mani vs. State Electricity Board reported in AIR 1963 KERALA 76.

9. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-